

## Louisiana Law Review

---

Volume 9 | Number 2

*The Work of the Louisiana Supreme Court for the*

*1947-1948 Term*

*January 1949*

---

# Civil Code and Related Subjects: Security Devices

Joseph Dainow

---

### Repository Citation

Joseph Dainow, *Civil Code and Related Subjects: Security Devices*, 9 La. L. Rev. (1949)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol9/iss2/11>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

## SECURITY DEVICES

*Joseph Dainow\***Ranking of liens*

The subject of priorities is one of strict statute law, and the liens established in favor of the state are usually accorded one of the highest rankings. However, it does not always have first place. In the case of *Comiskey v. Disalvo*<sup>1</sup> the contest on appeal was between the state's lien for a license tax judgment and a subsequent vendor's lien on the same property. Both had been duly recorded. The interesting feature of this problem was the fact that the state's lien had come into existence in 1936 under a statute<sup>2</sup> which gave it first rank, but when the vendor's lien was established in 1943 the statute had been amended<sup>3</sup> giving priority to the vendor's lien. The decision in favor of the vendor's lien did not constitute giving retroactive effect to the intervening statutory amendments, but was rather the determination of the ranking as of the time this question came about, namely with the sale in 1943.

*Building Contracts*

Under the building contract law, the liability of the surety on the contractor's performance bond is limited to one year from the owner's acceptance of the building.<sup>4</sup> In *Costanza v. Cannata*<sup>5</sup> the owner's acceptance was supplemented by the contractor's agreement to correct certain defects and to complete certain unfinished parts. When the owner called upon the contractor to fulfill this obligation, a copy of the letter was also sent to the surety. As a result of the contractor's procrastination and refusal, and the owner's having to get the work completed by somebody else, more than a year elapsed between the owner's acceptance and his claims against the surety for the increased ultimate costs which resulted from the delays while prices were rising. Three different estimates for this work had been submitted to the surety, but it did not authorize the owner to go ahead on any one of them. In the opinion of the court, the surety thereby assumed the risks of the delays and the fluctuating costs, and was therefore held responsible for the full amount.

---

\* Professor of Law, Louisiana State University.

1. 212 La. 965, 34 So.(2d) 41 (1947).

2. La. Act 15 of 1934 (3 E.S.) § 52 [Dart's Stats. (1939) § 8643].

3. La. Act 429 of 1938, § 1; La. Act 368 of 1940, § 1; La. Act 166 of 1942, § 11 [Dart's Stats. (Supp. 1942) § 8643].

4. La. Act 298 of 1926, § 14 [Dart's Stats. (1939) § 5119].

5. 36 So.(2d) 627 (La. 1948).

*Indemnity bond for mortgage cancellation*

It is the duty of the recorder of mortgages to cancel a mortgage upon proof of the payment or extinction of the principal indebtedness for which the mortgage was security.<sup>6</sup> He is responsible for the improper cancellation of a mortgage without adequate evidence. In *State ex rel. Hope v. Hickey*,<sup>7</sup> the recorder of mortgages of Orleans Parish was requested to cancel a mortgage without the production of the cancelled mortgage note which, it was alleged, had been lost or destroyed. His refusal to do so without the posting of an indemnity bond was not supported by the trial court but on appeal his position was sustained by the Supreme Court. The recorder performs a very important and responsible function, and it would facilitate the possibility for abuse to compel him to cancel a mortgage without adequate evidence or security.

If a written instrument has been lost or destroyed, there is a legal procedure to reestablish it with a judgment which then has the same force and effect as the original instrument.<sup>8</sup> But if the evidence tends to show that there never was a mortgage note (as in present case), there seems to be no other way to have the mortgage cancelled than by posting an indemnity bond—unless the recorder is willing to make the erasure on his own personal responsibility.

## SALE

*Alvin B. Rubin\**

*Formalities*

In *Lemoine v. Lacour*,<sup>1</sup> plaintiff sued for specific performance of an alleged contract to sell immovable property. The only written evidence was a receipt which read "Received from Mr. Clifton Lemoine \$35.00 for payment on place." The court held that the petition stated no cause of action because it attempted to enforce a verbal sale of immovable property in contravention of the provisions of Civil Code Article 2440. However, the court allowed plaintiff to supplement his pleadings and to interrogate

6. Art. 3371, La. Civil Code of 1870.

7. 36 So.(2d) 5 (La. 1948).

8. La. Act 57 of 1886, §§ 3-12 (Section 3 as amended by La. Act 30 of 1900, § 1) [Dart's Stats. (1939) §§ 7862-7861].

\*Part-time Assistant Professor of Law, Louisiana State University; member, Baton Rouge Bar.

1. 213 La. 109, 34 So. (2d) 392 (1948).